**HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**C.R. No.1934 of 2005**
**Date of decision : 19.02.2007**

**Rajinder Kaur** **.....Petitioner**

**versus**

**Amrik Singh** **....Respondent**

**CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.**

Present : Mr.Premjit Kalia, Advocate for the petitioner.
Mr.Anil Chawla, Advocate for the respondent.

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**ORDER**

**HEMANT GUPTA, J.**

The challenge in the present revision petition is to the order of ejectment passed by the Authorities below on the ground that the petitioner is in arrears of rent w.e.f. 1.8.1993

The respondent sought ejectment of the petitioner by filing a petition on 27.9.1999 on the ground that the tenant is in arrears of rent w.e.f. 1.8.1993 at the agreed rate of rent of Rs.900/- per month. The tenant took up a stand in the written statement that the rate of rent is Rs.600/- per month since the year 1996 and that he has already paid the rent, but tendered the rent for the months of October and November, 1999 before the first date of hearing before the learned Rent Controller.

Both the parties have led voluminous evidence before the learned Rent Controller. On the basis of said evidence, the learned Rent Controller returned a finding that the rate of rent is Rs.600/- per month,

but the petitioner has not tendered the rent w.e.f. 1.8.1993 and, therefore, he is liable to be evicted.

Aggrieved against the order of ejectment, an appeal was filed. It is the case of the petitioner that in terms of the interim order passed by the learned Appellate Authority, the tenant has deposited the arrears of rent w.e.f. 1.8.1993 @ Rs.600/- per month. However, the learned Appellate Authority has dismissed the appeal and maintained the order of ejectment on the ground that the tenant has failed to make the payment of rent falling due month by month and the arrears have been deposited only when the appeal was preferred against the order of ejectment and, therefore, non payment of the rent during the pendency of the proceedings is one of the relevant factors for exercising the discretion for affording the tenant an opportunity of making good the deficiency. It may be noticed that before the learned Appellate Authority, the petitioner relied upon a judgment of the Hon'ble Supreme Court of India, "**Rakesh Wadhawan versus Jagdamba Industrial Corporation, AIR-2002 S.C.-2004".**

Learned counsel for the petitioner has vehemently argued that in terms of the aforesaid judgment, the petitioner is entitled to an opportunity to tender the arrears of rent as determined by the learned Rent Controller. The failure to provide such an opportunity has caused manifest injustice to the petitioner and the petitioner cannot be ordered to be evicted without providing such an opportunity.

On the other hand, learned counsel for the respondent has argued that the petitioner has failed to tender the arrears of rent on the first date of hearing and, thus, the petitioner is not entitled to another opportunity. In any case, it was contended that the matter be remanded

back to the learned Rent Controller for making assessment of the arrears of rent, interest and cost, in terms of the judgment of *Rakesh Wadhawan's* case (supra).

After hearing the arguments advanced by the learned counsel for the parties, I am of the opinion that in terms of the judgment of Hon'ble Supreme Court of India in *Rakesh Wadhawan's* case (supra), the petitioner is entitled to an opportunity to tender the arrears of rent, so assessed by the learned Rent Controller. Provisional assessment of arrears of rent, interest and cost is required to be made during the pendency of the eviction proceedings, in terms of the aforesaid judgment. Once the eviction proceedings have been decided after giving opportunity to the parties to lead their evidence, what is assessed by the learned Rent Controller is not the provisional rent, but the rent what is due and payable. Since the ejectment petition was filed prior to the decision of *Rakesh Wadhawan's* case (supra) by the Hon'ble Supreme Court, there was no occasion for the learned Rent Controller to pass an order assessing the provisional arrears of rent. While deciding the eviction petition on 8.8.2003, the learned Rent Controller should have given an opportunity to the tenant to make the payment of arrears of rent in terms of the direction in *Rakesh Wadhawan's* case (supra). The learned Appellate Authority has committed grave illegality and irregularity while holding that the failure to make payment of rent every month is a ground which negates the exercise of discretion to give an opportunity to the petitioner to pay the arrears of rent.

In view thereof, I deem it appropriate to provide an opportunity to the tenant to tender the arrears of rent @ Rs.600/- per

month w.e.f. 1.8.1993. The tenant shall be entitled to adjust the amount already paid.

Parties through their counsel are directed to appear before the learned Rent Controller on 26.3.2007. The petitioner may deposit the entire arrears of rent, if any, after adjusting the rent already deposited, within one month of the date so fixed. If the rent is deposited, the eviction petition shall stand dismissed. However, in failure of the petitioner to deposit the entire arrears of rent, the order of eviction shall stand.

The revision petition stands disposed of accordingly.

**(HEMANT GUPTA)**
**JUDGE**

**February 19, 2007**
**mohinder*